

## § 201.440

(1) To grant a stay of action by the Commission or a self-regulatory organization as authorized by 17 CFR 200.30-14(g) (5)-(6); or

(2) To commence a subpoena enforcement proceeding as authorized by 17 CFR 200.30-4(a)(10).

(f) *Effectiveness of stay or of Commission decision to modify or reverse a delegated action.* As against any person who shall have acted in reliance upon any action at a delegated level, any stay or any modification or reversal by the Commission of such action shall be effective only from the time such person receives actual notice of such stay, modification or reversal.

[60 FR 32796, June 23, 1995; 60 FR 46500, Sept. 7, 1995]

## § 201.440 Appeal of determinations by the Public Company Accounting Oversight Board.

(a) *Application for review; when available.* Any person who is aggrieved by a determination of the Board with respect to any final disciplinary sanction, including disapproval of a completed application for registration of a public accounting firm, may file an application for review.

(b) *Procedure.* An aggrieved person may file an application for review with the Commission pursuant to § 201.151 within 30 days after the notice filed by the Board of its determination with the Commission pursuant to § 240.19d-4 of this chapter is received by the aggrieved person applying for review. The applicant shall serve the application on the Board at the same time. The application shall identify the determination complained of, set forth in summary form a brief statement of alleged errors in the determination and supporting reasons therefor, and state an address where the applicant can be served. The notice of appearance required by § 201.102(d) shall accompany the application.

(c) *Stay of determination.* Filing an application for review with the Commission pursuant to paragraph (b) of this section operates as a stay of the Board's determination unless the Commission otherwise orders either pursuant to a motion filed in accordance with § 201.401(e) or upon its own motion.

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(d) *Certification of the record; service of the index.* Within fourteen days after receipt of an application for review, the Board shall certify and file with the Commission one copy of the record upon which it took the complained-of action. The Board shall file with the Commission three copies of an index of such record, and shall serve one copy of the index on each party.

[69 FR 13179, Mar. 19, 2004]

## § 201.441 Commission consideration of Board determinations.

(a) *Commission review other than pursuant to an application for review.* The Commission may, on its own initiative, order review of any final disciplinary sanction, including disapproval of a completed application for registration of a public accounting firm, imposed by the Board that could be subject to an application for review pursuant to § 201.440(a) within 40 days after the Board filed notice thereof pursuant to § 240.19d-4 of this chapter.

(b) *Supplemental briefing.* The Commission may at any time prior to the issuance of its decision raise or consider any matter that it deems material, whether or not raised by the parties. The Commission will give notice to the parties and an opportunity for supplemental briefing with respect to issues not briefed by the parties where the Commission believes that such briefing could significantly aid the decisional process.

[69 FR 13179, Mar. 19, 2004]

## § 201.450 Briefs filed with the Commission.

(a) *Briefing schedule order.* Other than review ordered pursuant to § 201.431, if review of a determination is mandated by statute, rule, or judicial order or the Commission determines to grant review as a matter of discretion, the Commission shall issue a briefing schedule order directing the party or parties to file opening briefs and specifying particular issues, if any, as to which briefing should be limited or directed. Unless otherwise provided, opening briefs shall be filed within 30 days of the date of the briefing schedule order. Opposition briefs shall be

filed within 30 days after the date opening briefs are due. Reply briefs shall be filed within 14 days after the date opposition briefs are due. No briefs in addition to those specified in the briefing schedule order may be filed except with leave of the Commission. The briefing schedule order shall be issued:

(1) At the time the Commission orders review on its own initiative pursuant to §§201.411 or 201.421, or orders interlocutory review on its own motion pursuant to §201.400(a); or

(2) Within 21 days, or such longer time as provided by the Commission, after:

(i) The last day permitted for filing a petition for review pursuant to §201.410(b) or a brief in opposition to a petition for review pursuant to §201.410(d);

(ii) Receipt by the Commission of an index to the record of a determination of a self-regulatory organization filed pursuant to §201.420(d);

(iii) Receipt by the Commission of an index to the record of a determination by the Board filed pursuant to §201.440(d);

(iv) Receipt by the Commission of the mandate of a court of appeals with respect to a judicial remand; or

(v) Certification of a ruling for interlocutory review pursuant to §201.400(c).

(b) *Contents of briefs.* Briefs shall be confined to the particular matters at issue. Each exception to the findings or conclusions being reviewed shall be stated succinctly. Exceptions shall be supported by citation to the relevant portions of the record, including references to the specific pages relied upon, and by concise argument including citation of such statutes, decisions and other authorities as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief, in an appendix thereto, or by citation to the record. Reply briefs shall be confined to matters in opposition briefs of other parties.

(c) *Length limitation.* Except with leave of the Commission, opening and opposition briefs shall not exceed 14,000 words and reply briefs shall not exceed 7,000 words, exclusive of pages containing the table of contents, table of

authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions or rules, and exhibits. The number of words shall include pleadings incorporated by reference. Motions to file briefs in excess of these limitations are disfavored.

(d) *Certificate of compliance.* An opening or opposition brief that does not exceed 30 pages in length, exclusive of pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits, but inclusive of pleadings incorporated by reference, is presumptively considered to contain no more than 14,000 words. A reply brief that does not exceed 15 pages in length, exclusive of pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits, but inclusive of pleadings incorporated by reference, is presumptively considered to contain no more than 7,000 words. Any brief that exceeds these page limits must include a certificate by the party's representative, or an unrepresented party, stating that the brief complies with the length limitation set forth in §201.450(c) and stating the number of words in the brief. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the brief.

[60 FR 32796, June 23, 1995, as amended at 68 FR 35789, June 17, 2003; 69 FR 13180, Mar. 19, 2004]

#### § 201.451 Oral argument before the Commission.

(a) *Availability.* The Commission, on its own motion or the motion of a party or any other aggrieved person entitled to Commission review, may order oral argument with respect to any matter. Motions for oral argument with respect to whether to affirm all or part of an initial decision by a hearing officer shall be granted unless exceptional circumstances make oral argument impractical or inadvisable. The Commission will consider appeals, motions and other matters properly before it on the basis of the papers filed by